

***United States Court of Appeals
for the Second Circuit***

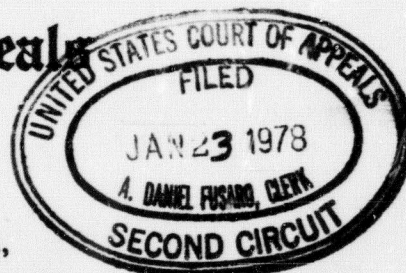


**APPELLANT'S
REPLY BRIEF**

**Docket
No. 77-6137**

**In The
United States Court of Appeals**

For the Second Circuit



BENEFICIAL FINANCE CO. OF NEW YORK, INC.,

Plaintiff-Appellant,

— v. —

RONALD DALLAS and MARY E. DALLAS,

Defendants,

and

UNITED STATES POSTAL SERVICE,

Defendant-Appellee.

**On Appeal from the United States District Court
for the Western District of New York**

REPLY BRIEF FOR THE APPELLANT

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REPLY BRIEF FOR THE APPELLANT

POINT I

EVERY CIRCUIT COURT DECISION SUBSEQUENT TO THE SEVENTH CIRCUIT COURT DECISION IN STANDARD OIL DIVISION, AMERICAN OIL COMPANY v. JOHN STARKS, JR. AND UNITED STATES POSTAL SERVICE, 528 F.2d 201 (7th Cir. 1975) WHICH HAS HELD THE UNITED STATES POSTAL SERVICE (USPS) SUBJECT TO GARNISHMENT HAS BEEN DECIDED INDEPENDENTLY AND ON THE MERITS.

The USPS has stated that the decisions of the Eighth, Third and Fourth Circuits, which have held the USPS subject to garnishment proceedings, rely specifically on the analysis of the issue decided in the Seventh Circuit decision of Standard Oil v. Starks, supra (USPS brief, p. 5). However, a careful reading of the decisions in the Eighth Circuit, May Department Stores Co. v. Williamson, 549 F.2d 1147 (8th Cir. 1977), Third Circuit, Goodman's Furniture Company v. United States Postal Service, 561 F.2d 462 (3rd Cir. 1977), and Fourth Circuit, General Electric Credit Corporation v. Smith and USPS, ____ F.2d ____ (4th Cir. 1977), demonstrates independent decisions based solely upon the merits in each case.

The May Department Stores and Goodman's Furniture cases were decided upon essentially the same rationale as the Standard Oil case, but clearly considered the entire issue and reached their own conclusions. In General Electric Credit Corporation v. Smith and USPS, supra, the Court, while acknowledging that it concurs with the Seventh and Eighth Circuits, based its decision upon its own evaluation of the "sue and be sued" clause (39 U.S.C. §401(1)).

The Court did not rely specifically on F. H. A. v. Burr, 309 U.S. 242 (1940), but rather on White v. Bloomberg, 501 F.2d 1397 (4th Cir. 1974).

POINT II

THE USPS HAS MISINTERPRETED THE DECISION IN F. H. A. v. BURR, SUPRA, AND THE DECISIONS IN STANDARD OIL, SUPRA, MAY DEPARTMENT STORES, SUPRA, GOODMAN'S FURNITURE, SUPRA, AND GENERAL ELECTRIC CREDIT CORPORATION, SUPRA.

The USPS alleges that Burr, supra, required that an instrumentality of the United States government must be a governmental corporation or quasi-governmental corporation launched in the commercial world before garnishment proceedings can be included in a waiver of sovereign immunity from suit such as that found in the "sue and be sued" clause of the Postal Reorganization Act (PRA) (39 U.S.C. §401(1)). Beneficial Finance contends that the USPS has in fact been launched into the commercial world by the Postal Reorganization Act of 1970 (see Beneficial Finance's brief, Point II). Nevertheless, even if the USPS has not been launched into the commercial world, under the rationale in the Burr decision, USPS' position is incorrect. The Supreme Court, in Burr, supra, stated that "waivers by Congress of governmental immunity in the case of such federal instrumentalities should be liberally construed." 309 U.S. at 245. The Court went on further to state that limitations to such waivers of immunity

from suit should be implied only when: 1) it is necessary to avoid grave interference with governmental function; 2) the type of suit in question is not consistent with the statutory or constitutional scheme with regard to the agency, or 3) Congress has manifested a clear intention that the clause be interpreted in a narrow sense. *Id.* The USPS seeks to add a new condition, being that the agency must be a governmental corporation or quasi-governmental corporation launched into the commercial world before garnishment proceedings are includable in the waiver of immunity from suit. That rationale misinterprets the entire point of the Burr decision.

The Court in Burr examined the "sue and be sued" clause of the F. H. A. in relation to the three standards set forth above and determined that said clause embraced the civil process of garnishment (see Point I of Beneficial's brief). While the Court did discuss the commercial nature of the F. H. A., said discussion was not essential in its interpretation of the clause "sue and be sued." The Court's basic holding was that "the words 'sue and be sued' in their normal connotations embrace all civil process incident to the commencement or continuance of legal proceedings." 309 U.S. at 245.

In a recent decision holding the USPS subject to garnishment proceedings, the Court stated:

The Court does not rely upon the fact that Congress has launched the Postal Service into

the commercial world as a business-like venture.
Lincoln National Bank v. Marotta, 76-CV-260 and
76-CV-01 (N.D. N.Y. 1977).

Judge Munson went on to find that by explicitly setting forth only two exceptions to the general waiver of immunity from suit found in the PRA, 39 U.S.C. §409(b) and (c), Congress intended that the "sue and be sued" clause "be accorded its literal, everyday meaning."
Lincoln National Bank, at ____.

POINT III

THE 1977 AMENDMENTS TO THE SOCIAL SECURITY ACT
DO NOT AFFECT THE WAIVER OF SOVEREIGN IMMUNITY
FOUND IN THE PRA.

The USPS alleges that §462(a) of the Social Security Act (42 U.S.C. §662(a)), implies a Congressional intent to limit the Congressional waiver of sovereign immunity from suit found in the Postal Reorganization Act (39 U.S.C. §401(1)) to garnishment for alimony and support only and that immunity still exists for all other garnishment proceedings. That argument fails on two grounds. First, Congress has the power to expressly limit the waiver of immunity from suit contained in Title 39 to exclude garnishment proceedings. The fact that it has not done so, even two years after the Standard Oil decision, demonstrates Congress' intent to allow "literal" interpretation of the "sue and be sued" clause. Second, §459 of the Social Security Act (42 U.S.C. §659) is a

broad, all-encompassing section, applying garnishment of alimony and child support to every agency, instrumentality, department, federal corporation, etc. Section 462(a), while defining the scope of §459, does not limit the greater waiver of immunity already granted in the PRA (see Point IV of Beneficial's brief).

POINT IV

THE USPS' CITATION OF CASES SUPPORTING ITS POSITION IS INCORRECT.

On page 8 of the USPS' brief, USPS has cited nineteen district court cases supposedly in its favor. All but five of these cases are unreported and have not been made available to Beneficial Finance. Therefore, they should be disregarded by the Court.

In addition, five of said nineteen district court cases have been overruled by decisions of the Fourth and Eighth Circuits. See, Lawhorn v. Lawhorn, 351 F.2d 1399 (S.D. W.Va. 1972) (overruled by May Department Stores Co., supra); Nalco Credit Union v. Turner, Civil Action No. 76-323(c)(3) (E.D. Mo. 1976); Laclede Gas Company v. Fayne, No. 76-424(c)(4) (E.D. Mo. 1976); Franklen Union Furniture Co. v. Batchman, No. 76-599 C (3) (E.D. Mo. July 19, 1976); Roy T. Radcliffe v. Blunk, No. 76-512(C)(A) (E.D. Mo. July 7, 1976), all overruled by General Electric Credit Corporation v. Smith, ____ F.2d ____ (4th Cir. November 23, 1977).

POINT V

CONTRARY TO THE USPS' POSITION, COLLATERAL
ESTOPPEL IS APPROPRIATE IN THIS MATTER.

The USPS has alleged that collateral estoppel is inappropriate for two reasons: 1) that collateral estoppel was not raised in the district court, and 2) that the doctrine of collateral estoppel makes conclusive in subsequent proceedings only determinations of fact and mixed fact and law and that such a situation does not exist here. The USPS is wrong on both points.

First, the action below was a motion for summary judgment on a stipulated set of facts. There were no pleadings and therefore there was no necessity to plead collateral estoppel as a defense. The issue of collateral estoppel, being a question of law, was raised in Beneficial Finance's reply memorandum of law, and was properly before the District Court.

Second, the relevant facts and law in each of the cases before the four circuit courts previously mentioned were and are the same. The Supreme Court, in Commissioner v. Sunnen, 333 U.S. 591 (1948), held that relevant facts must be the same, and that test is satisfied here. Even though the employees are different and the judgments are different, the essential facts are the same, to wit: These cases all involve USPS employees, subject to a state court judgment, and creditors are attempting to garnish their

wages. The name of the employee and the amount of the judgment are irrelevant to the issue in question.

In addition, Devine v. Commissioner, 500 F.2d 1041 (2nd Cir. 1974), does not bar the application of collateral estoppel in this matter. That case dealt with complex tax questions which were open to "varying appraisals." The issue presented here is the usage of the straight-forward phrase "sue and be sued." Four circuits have interpreted said phrase to include garnishment of USPS employees. Further consideration only places a burden upon the courts and upon the public. As seen in USPS' brief, Beneficial Finance has already been forced to relitigate this issue in Louisiana. See, BFC v. Moulard, Civil No. 77-369 (M.D. La. January 5, 1978) (USPS brief, p. 8).

CONCLUSION

FOR THESE REASONS, AS WELL AS THOSE CONTAINED
IN BENEFICIAL'S MAIN BRIEF, THE JUDGMENT OF
THE DISTRICT COURT SHOULD BE REVERSED.

Respectfully submitted,

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